

The Legal Bases for Crime Victim Rights in Michigan

2.1	The Constitutional Basis for Crime Victim Rights in Michigan	16
2.2	Crime Victim's Rights Act ("CVRA")	17
2.3	Limitations on Civil Actions for Violations of the CVRA	18
2.4	Limitations on Victims' Standing to Appeal Court Decisions	18
2.5	Remedies Available for Violations of the CVRA	21
	A. Mandamus Actions Against Nonjudicial Officers	21
	B. Actions for Superintending Control of a Lower Court	22
	C. Judicial Grievance Actions	23
	D. Public Disclosure of Public Official's Failure to Apply CVRA	23
2.6	Limitations on Remedies for Criminal Defendants and Juveniles for Violations of the CVRA	24
2.7	Crime Victim Services Commission ("CVSC")	24
2.8	Assessments and Funding	24
	A. Assessments of Convicted and Adjudicated Offenders	25
	B. Felony, "Serious Misdemeanor," "Specified Misdemeanor," and "Juvenile Offense" Defined	25
	C. Duties of Court Clerk	28
	D. Depositing Unclaimed Restitution in the "Crime Victim's Rights Fund"	28
2.9	Crime Victim's Rights Assessment Report	29

In this chapter. . .

This chapter discusses the constitutional and statutory bases of the rights of crime victims in Michigan, remedies for violations of those rights, and funding of crime victim services. The following subjects are covered in this chapter:

- F the legal bases of crime victim rights, including the effect of conflicts between a victim's rights and a defendant's or juvenile's federal constitutional rights;
- F limitations on a crime victim's ability to appeal adverse decisions in criminal and juvenile delinquency cases;
- F remedies available to crime victims for violations of their constitutional and statutory rights;
- F limitations on a defendant's or juvenile's ability to assert a violation of the Crime Victim's Rights Act ("CVRA") to obtain appellate relief; and
- F sources of funding for crime victim services in Michigan.

Related subjects are discussed elsewhere in this manual. See Chapter 3 for an overview of the CVRA. Section 10.22 details the allocation of costs, fines, fees, assessments, and restitution collected by a court.

2.1 The Constitutional Basis for Crime Victim Rights in Michigan

The rights of crime victims in Michigan are preserved by the state constitution. Const 1963, art 1, § 24, states:

“(1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

“(2) The legislature may provide by law for the enforcement of this section.

“(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims’ rights.”

Many of the rights enumerated above in subsection (1) are provided in the Crime Victim’s Rights Act, MCL 780.751 et seq.; MSA 28.1287(751) et seq. The assessment provided for in subsection (3) is contained in the Crime Victim Services Commission Act, MCL 780.901 et seq.; MSA 28.1287(901) et seq.*

The CVRA was enacted in 1985. The foregoing provision of Michigan’s constitution was added in 1988. Among the purposes of amending the state

*See Section 2.8, below, for discussion of this assessment.

constitution to include crime victims' rights when those rights were already provided by statute were the following:

- F to balance the criminal defendant's rights, which are guaranteed by state constitution, and the crime victim's rights;
- F to give permanence to crime victims' rights; and
- F to provide a means of enforcement* of the crime victim's rights. Van Regenmorter, *Crime victims' rights—A legislative perspective*, 17 Pepperdine L R 59, 77 (1989).

*See Section 2.5, below, for a discussion of remedies for violations of victims' rights.

It is important to note that provisions of the United States Constitution preempt *conflicting* state constitutional and statutory provisions. Therefore, when a criminal defendant's federal constitutional right conflicts with a crime victim's right contained in a state constitution or statute, the defendant's federal constitutional right prevails and must be preserved at the cost of the victim's right. For example, in *Booth v Maryland*, 482 US 496, 501–02; 107 S Ct 2529; 96 L Ed 2d 440 (1987), the United States Supreme Court held that use of a victim impact statement as required by a Maryland statute during the sentencing phase of a capital murder trial violated the defendant's Eighth Amendment right against cruel and unusual punishment. Although *Booth* was later overturned in *Payne v Tennessee*, 501 US 808; 111 S Ct 2597; 115 L Ed 2d 720 (1991), on the grounds that use of a victim impact statement at a capital sentencing hearing did not violate the defendant's federal constitutional rights, where state law and the federal constitution conflict, rights guaranteed by the federal constitution prevail.

Note: In 1982, the President's Task Force on Victims of Crime, *Final Report*,* recommended that the Sixth Amendment to the United States Constitution be amended to provide specific rights for crime victims. Since 1982, several resolutions to amend the federal constitution have been introduced in Congress. See, e.g., SJ Res 3, 106th Cong (1999). The purposes of including victims' rights in the federal constitution include ensuring "that courts engage in a careful and conscientious balancing of the rights of victims and defendants." *New Directions From the Field: Victims' Rights and Services for the 21st Century* (Washington, DC: United States Department of Justice, 1998), pp 5, 9.

*(Washington, DC: United States Government Printing Office, 1982), pp 114–15.

2.2 Crime Victim's Rights Act ("CVRA")

The Crime Victim's Rights Act, MCL 780.751 et seq.; MSA 28.1287(751) et seq., contains many of the rights afforded to crime victims in Const 1963, art 1, § 24. The CVRA applies to criminal and juvenile proceedings. The act is divided into three articles, which provide rights to the victims of felonies, juvenile offenses, and serious misdemeanors.*

*See Chapter 3 for an overview of the CVRA.

Other statutes, court rules, and administrative rules also help to enforce victims' rights in Michigan. These legal rules are discussed where relevant throughout the text of this manual.

2.3 Limitations on Civil Actions for Violations of the CVRA

*But see Section 2.5, below, for discussion of remedies available to victims when the CVRA is violated.

Subsection 2 of Const 1963, art 1, § 24, states that “[t]he legislature may provide by law for the enforcement of this section.” However, the CVRA does not explicitly provide a remedy to crime victims when a law enforcement officer, prosecutor, judicial officer, or corrections official violates a provision of the act. In fact, provisions of the CVRA prohibit victims from bringing civil actions for money damages against certain entities or individuals based on violations of the act. MCL 780.773; MSA 28.1287(773), states that Article 1 of the CVRA, which deals with victims of felonies, shall not be construed “as creating a cause of action for money damages against the state, a county, a municipality or any of their agencies, or instrumentalities, or employees.” Article 2 of the CVRA, dealing with victims of juvenile offenses, and Article 3, dealing with victims of serious misdemeanors, contain similar provisions. MCL 780.800; MSA 28.1287(800), and MCL 780.832; MSA 28.1287(832).*

2.4 Limitations on Standing to Appeal Court Decisions

“Standing” refers to “[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *Black’s Law Dictionary* (St. Paul, MN: West, 7th ed, 1999), p 1413. To establish standing, a person must show two things:

“[F]irst, that the party will devote himself to the sincere and vigorous advocacy of his position, and, second, that the party has a legally protected interest at stake that differs from the interest of the citizenry at large.” *People v Yeoman*, 218 Mich App 406, 420 (1996).

*The procedures required to appeal a grant of parole are set forth in Section 9.5(B).

By statute, a crime victim has standing to appeal a decision of the parole board granting the defendant parole. MCL 791.234(9); MSA 28.2304(9).* However, the victim of a crime is not a “party” to a criminal case. *People v Carson*, 87 Mich App 163, 169 (1978). No statute or court rule grants crime victims standing to question orders of the trial court in criminal cases. Indeed, statutes and court rules limit the right to appeal a trial court’s orders to “parties.” In criminal cases, the parties are the prosecuting attorney and the defendant. See MCL 770.3; MSA 28.1100 (“aggrieved parties” have right to appeal final orders or judgments in criminal cases), MCL 770.12; MSA 28.1109 (prosecuting attorney has right to appeal on behalf of the people of Michigan), MCR 6.431 (defendant may move for new trial), and MCR 6.501 et seq. (defendant may seek post-conviction relief). In juvenile delinquency cases, the parties are the petitioner, the juvenile, and the juvenile’s parent(s). MCR 5.903(A)(13)(a). See also MCR 5.992 and 5.993 (parties to a juvenile delinquency case may seek rehearing or appeal). Therefore, if the juvenile’s

parent is the victim of the juvenile's offense, the victim-parent is a party in the juvenile delinquency proceedings.

No Michigan case has directly addressed a crime victim's standing to appeal a court decision in a criminal case. However, in *People v Pfeiffer*, 207 Mich App 151, 157 (1994), the Court of Appeals stated that the CVRA "does not purport to confer general remedial rights on victims" *Id.* Courts in other states and federal courts have found that crime victims do not meet the second prong of the test stated above in *Yeoman*: they do not have a legally protected interest in the criminal proceedings that differs from other citizens' interest in the proceedings. See, e.g., *Linda R S v Richard D*, 410 US 614, 619; 93 S Ct 1146; 35 L Ed 2d 536 (1973) (private citizens do not have a legally cognizable interest in the prosecution or non-prosecution of another person).

1. Case Law From Other States

Courts of other states have denied victims standing to appeal decisions in the following criminal cases.

F *Dix v Superior Court*, 807 P2d 1063, 1069 (Cal, 1991)

The Supreme Court of California held that a crime victim did not have general standing to appeal the trial court's decision to resentence the defendant. The defendant was convicted of the aggravated assault of the victim and initially sentenced to prison, but after he agreed to cooperate in another prosecution, the defendant's sentence was reduced. *Id.* at 1065. The victim sought to appeal the decision, claiming that because the state had enacted victim's rights legislation, victims had standing to appeal *any* decision in a criminal case, not just the denial of rights under the victim's rights statutes. Although the Court on appeal did not express an opinion about victims' remedies under the victims' rights statutes, it did state that, as a general rule, crime victims do not have a legally enforceable interest in the outcome of criminal proceedings against another person. *Id.* at 1066–67.

F *State v Lamberton*, 899 P2d 939, 942 (Ariz, 1995)

The Supreme Court of Arizona held that crime victims were not "aggrieved parties" and therefore could not appeal from decisions in criminal cases. Pursuant to a victim's rights statute, the victim presented written and oral impact evidence at a hearing on defendant's motion for post-conviction relief. When the trial court granted the defendant's motion and reduced his sentence, both the victim and the prosecuting attorney appealed that decision. On appeal, the Court concluded that victims' constitutional and statutory rights to notice and to participate in criminal proceedings did not convert them into parties to the case. The victim was not "aggrieved" by the trial court's decision, since it did not "deny her some personal or property right, nor . . . impose a substantial burden upon her." *Id.* at 941. The Court dismissed the victim's appeal and allowed the prosecutor's appeal to proceed.

*See Sections 6.1–6.7 for discussion of this right under Michigan law.

*See Section 2.5(A), below, for a discussion of this remedy under Michigan law.

*Under Michigan’s CVRA, restitution orders remain in effect until satisfied in full. See MCL 780.766(13); MSA 28.1287(766) (13), discussed in Section 10.20.

F *Gansz v Colorado*, 888 P2d 256, 257 (Colo, 1995)

The Supreme Court of Colorado held that neither a state constitutional amendment nor related crime victim legislation conferred standing on a crime victim to contest or appeal the dismissal of criminal charges by the prosecuting attorney. Although a state statute gave victims the right to *consult** with the prosecuting attorney regarding dismissal, the statute also provided that failure to comply with it could not invalidate an order dismissing the case. Thus, the Court concluded, the victim did not have a *right to be heard* prior to or on appeal from the dismissal of the charges. *Id.* at 259.

F *Reed v Becka*, 511 SE 2d 396, 399 (SC App, 1999)

The South Carolina Court of Appeals concluded that crime victims did not have standing to appeal a trial court’s orders in criminal cases. However, the state’s crime victims’ rights statute provided that the rights of crime victims were enforceable by writ of mandamus.*

2. Federal Case Law

Several federal courts have denied crime victims standing to appeal district court orders rescinding restitution orders under the federal Victim and Witness Protection Act (“VWPA”), 18 USC 3663 et seq., which contains many provisions similar to Michigan’s Crime Victim’s Rights Act.* The Michigan Supreme Court has referred to the VWPA when interpreting Michigan’s restitution provisions. See, e.g., *People v Law*, 459 Mich 419, 425 (1999), and *People v Grant*, 455 Mich 221, 231 (1997).

F *United States v Johnson*, 983 F2d 216 (CA 11, 1993)

The defendant failed to pay restitution ordered to a bank at which defendant had cashed bad checks. The district court revoked defendant’s probation and rescinded the restitution order. *Id.* at 217–18. In denying the bank standing to appeal the rescission of the restitution order, the U.S. Court of Appeals concluded that the bank was not a party to the criminal proceeding. Thus, the bank did not suffer the “injury in fact” required by Article III of the federal constitution for a federal court to assume jurisdiction of a case. *Id.* at 219. In addition, the Court found that Congress did not intend to grant crime victims remedial rights under the VWPA. Although restitution is enforceable under the VWPA “in the same manner as a civil judgment,” a restitution order is not a civil judgment and can be rescinded over the victim’s objection. *Id.* at 220–21.

F *United States and Atkins, et al. v Mindel*, 80 F3d 394 (CA 9, 1996)

A group of crime victims appealed the district court’s order rescinding criminal restitution payments. The U.S. Court of Appeals held that the crime victims lacked standing to appeal because they did not suffer an “injury in fact” from the rescission of the restitution order. The Court reasoned that the only interest vindicated by a restitution order was the government’s penal interest; thus, the rescission of the restitution order did not invade a legally

protected interest of the crime victims. *Id.* at 396–97. The victims in this case attempted to distinguish *Johnson, supra*, by arguing that they had incorporated the settlement agreement from a civil suit into the restitution order in the criminal case, but the Court was unpersuaded. *Mindel, supra*, at 397. The victims in *Mindel* could still seek enforcement of the civil settlement, however.

Note: The Michigan Supreme Court has stated that restitution is compensatory, not penal, in nature. *People v Peters*, 449 Mich 515, 524 (1995) (restitution order survives the defendant’s death). But compare *Kelly v Robinson*, 479 US 36, 52–53; 107 S Ct 353; 93 L Ed 2d 216 (1986) (although it resembles a judgment for the benefit of the victim, restitution serves the penal and rehabilitative interests of the state and is not dischargeable in bankruptcy proceedings).*

*See Section 10.20(B) for a more detailed discussion of the *Kelly* case.

2.5 Remedies Available for Violations of the CVRA

As noted in Section 2.3, crime victims may not sue public officials for violating their rights under the CVRA. Moreover, crime victims do not have standing to appeal orders issued in criminal proceedings. See Section 2.4. However, crime victims may have other remedies available to them when a public prosecuting attorney, corrections official, or judge violates their rights under the CVRA. These remedies are discussed in this section and include mandamus actions against nonjudicial officers, actions for superintending control of a lower court, judicial grievance actions, and public disclosure of a public official’s failure to apply the CVRA.

A. Mandamus Actions Against Nonjudicial Officers

An action for a writ or order of mandamus is used to compel the performance of mandatory legal duties by public officials or bodies. Mandamus actions may be used to compel *nonjudicial* officers to perform mandatory duties. To compel judicial officers to comply with mandatory legal duties, the writ or order of superintending control must be used. See MCR 3.302(C) (“A superintending control order replaces . . . the writ of mandamus when directed to a lower court or tribunal”).*

*Actions for superintending control are discussed in Section 2.5(B), below.

It is well established that mandamus is an extraordinary remedy; if there is an adequate alternative remedy available, a writ or order of mandamus must not be used. *Coffin v Detroit Bd of Ed*, 114 Mich 342, 345 (1897). In *Smith v Crime Victims Comp Bd*, 130 Mich App 625, 628 (1983), the Court of Appeals held that because the plaintiff could apply for leave to appeal the denial of her application for crime victim’s compensation from the former Crime Victims Compensation Board, she had an adequate remedy and mandamus was improper. Because crime victims do not have standing to appeal court decisions in criminal cases, that remedy is unavailable and mandamus may therefore be proper.*

*See Section 2.4, above (victim standing to appeal court decisions) and Chapter 11 (crime victim compensation proceedings).

For a writ of mandamus to issue, the public official must have a clear legal duty, and the plaintiff must have a clear legal right to the official's discharge of that duty. *People v Young (On Remand)*, 220 Mich App 420, 426 (1996). In addition, mandamus is proper to compel a public official to exercise his or her discretion, but not to exercise that discretion in a particular way. "[M]andamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner." *Teasel v Dep't of Mental Health*, 419 Mich 390, 409–10 (1984).

Actions for mandamus are governed by MCL 600.4401 et seq.; MSA 27A.4401 et seq., and MCR 3.305. See also MCR 3.301, which contains general rules of procedure for "extraordinary writs," including writs of mandamus.

B. Actions for Superintending Control of a Lower Court

An action for superintending control seeks to compel a judicial officer to comply with a mandatory legal duty. "A superintending control order enforces the superintending control power of a court over lower courts or tribunals." MCR 3.302(A).

As with writs or orders of mandamus, superintending control is an extraordinary remedy that should only be used in exceptional circumstances. *In re Gosnell*, 234 Mich App 326, 341 (1999). If an adequate alternative remedy is available to the person seeking the order of superintending control, a complaint for superintending control may not be filed. MCR 3.302(B). If an appeal is available, that method of reviewing the lower court action must be used. "If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed." MCR 3.302(D)(2). In *Frederick v Presque Isle County Circuit Judge*, 439 Mich 1, 15 (1991), the Supreme Court held that superintending control was proper, where the plaintiff could not appeal a circuit court's decision denying him appellate attorney fees because the decision was contained in a letter from the court administrator rather than in an order issued by the judge.

The action for superintending control is proper to determine if the lower court failed to perform a clear legal duty. *In re Gosnell*, 234 Mich App 326, 341 (1999). It is not proper to review an alleged abuse of discretion. *In re Wayne Co Prosecutor*, 192 Mich App 677, 680 (1991).

An action for superintending control may be proper to challenge a general practice of the inferior court. *In re Lafayette Towers*, 200 Mich App 269, 271–72 (1993). See, for example, the following cases:

- F *In re Gosnell*, 234 Mich App 326, 342–43 (1999). (An action for superintending control was improper where plaintiffs failed to present evidence of a pattern of violations of the "peace bond" statute by a district court judge. Because plaintiffs only showed error in their own cases, appeal was the proper remedy.)

- F *Lockhart v 36th Dist Court Judge*, 204 Mich App 684, 690–91 (1994). (A superintending control action was proper to challenge a district court judge’s policy of requiring attorneys to wait in the courtroom until their cases were called and imposing sanctions for violations of the policy. Requiring plaintiff to challenge each application of the policy on appeal would be too burdensome to constitute an adequate remedy.)
- F *Frederick v Presque Isle County Circuit Judge*, 439 Mich 1, 15 (1991). (A superintending control action was proper to review whether the county had a statutory obligation to compensate assigned appellate counsel.)

Actions for superintending control are governed by MCR 3.302. See also MCR 3.301, which contains general rules of procedure for “extraordinary writs,” including writs of superintending control.

C. Judicial Grievance Actions

A judge may be subject to disciplinary proceedings for “misconduct in office.” MCR 9.205(B). “Misconduct in office” includes:

- F persistent failure to perform judicial duties, conduct clearly prejudicial to the administration of justice, persistent incompetence or neglect, or persistent failure to treat persons fairly, with courtesy and respect, MCR 9.205(C);
- F violation of the Code of Judicial Conduct may constitute misconduct, MCR 9.205(E); and
- F disregarding statutes, court rules, and judicial canons of ethics, *In the Matter of Del Rio*, 400 Mich 665, 695 (1977).

Proceedings of the Judicial Tenure Commission are governed by MCR 9.201 et seq.

D. Public Disclosure of Public Official’s Failure to Apply CVRA

Prosecuting attorneys, judges, and sheriffs in Michigan are elected public officials. If they fail to apply the CVRA or other laws intended to safeguard the rights of a crime victim, the victim may publicly disclose this to news media organizations and others. The desire to avoid further public disclosures may help remedy violations of crime victim rights laws.

If a judicial officer has failed to apply the CVRA or other law, the victim may wish to contact the State Court Administrative Office (SCAO) for guidance and assistance.

2.6 Limitations on Remedies for Criminal Defendants and Juveniles for Violations of the CVRA

A criminal defendant may not seek to have his or her conviction or sentence set aside on grounds that the victim was not provided a right, privilege, or notice under the CVRA. MCL 780.774; MSA 28.1287(774), and MCL 780.833; MSA 28.1287(833). Similarly, a juvenile offender may not seek to have a juvenile delinquency proceeding set aside for a violation of Article 2 of the CVRA. MCL 780.801; MSA 28.1287(801).

In *People v Smith*, 180 Mich App 622, 623–24 (1989), the Court of Appeals held that the prosecuting attorney’s failure to give the victim notice of her right to make an oral impact statement at sentencing did not entitle the defendant to resentencing.

2.7 Crime Victim Services Commission (“CVSC”)

The Crime Victim Services Commission is a state agency within the Department of Community Health charged with providing services to crime victims in Michigan. The commission itself is comprised of five members appointed by the governor from the following professions: one attorney, one prosecuting attorney, one peace officer, one doctor, and one community-based victim advocate. MCL 18.352(2)(a)–(e); MSA 3.372(2)(2)(a)–(e).

The CVSC administers the state’s crime victim compensation program,* federal Victims of Crime Act victim assistance grants, assessment collections and disbursements from the crime victim’s rights fund, and provides training and technical assistance for victim advocates in public and private agencies throughout Michigan. MCL 18.353; MSA 3.372(3) (powers and duties of commission), MCL 780.903; MSA 28.1287(903) (duties of commission), and MCL 780.906–780.907; MSA 28.1287(906)–28.1287(907) (disbursement of funds to pay for crime victim rights services).

*See Chapter 11 for a detailed discussion of crime victim compensation.

2.8 Assessments and Funding

This section addresses the collection of funds received from offenders under the CVRA. When a defendant or juvenile offender is convicted or adjudicated of an enumerated offense, the trial court must order the defendant or juvenile to pay a “crime victim’s rights fund assessment.” This assessment is discussed in Sections 2.8(A)–(B), below. The court clerk must report monthly on the assessments collected and transmit the money to the Department of Treasury to fund crime victim services. See Section 2.8(C), below.* In some circumstances, unclaimed restitution payments may be deposited in the “crime victim rights fund.” See Section 2.8(D), below.

*See Section 2.9 for a sample reporting form.

A. Assessments of Convicted and Adjudicated Offenders

The court must order a “crime victim’s rights fund assessment” against each convicted defendant or adjudicated juvenile offender as follows:

- F Each defendant convicted of a felony must pay an assessment of \$60.00, MCL 780.905(1); MSA 28.1287(905)(1).
- F Each person convicted of a “serious misdemeanor” or “specified misdemeanor” must pay an assessment of \$50.00, MCL 780.905(1); MSA 28.1287(905)(1).
- F Each juvenile for whom an order of disposition is entered for a “juvenile offense” must pay an assessment of \$20.00, MCL 780.905(2); MSA 28.1287(905)(2).
- F Each juvenile against whom a conviction is entered following “designated proceedings” must be ordered to pay the assessment under the rules governing adults. MCL 712A.18(12); MSA 27.3178(598.18)(12), and MCL 780.901(f); MSA 28.1287(901)(f).*

*See Sections 3.2(F) and (H) for a description of “designated proceedings.”

The court may only order one “crime victim’s rights fund assessment” per criminal or juvenile delinquency case. MCL 780.905(1) and (2); MSA 28.1287(905)(1) and (2).

B. Felony, “Serious Misdemeanor,” “Specified Misdemeanor,” and “Juvenile Offense” Defined

For purposes of the “crime victim’s rights fund assessment,” a felony is an offense punishable by imprisonment for more than one year, or an offense expressly designated by law as a felony. MCL 780.901(d); MSA 28.1287(901)(d).

“Serious misdemeanors” are listed in MCL 780.811(1)(a); MSA 28.1287(811)(1)(a). MCL 780.901(g); MSA 28.1287(901)(g). They are:

- F assault and battery, MCL 750.81; MSA 28.276;
- F aggravated assault, MCL 750.81a; MSA 28.276(1);
- F breaking and entering or illegal entry, MCL 750.115; MSA 28.310;
- F fourth-degree child abuse, MCL 750.136b(6); MSA 28.331(2)(6);
- F enticing a child for an immoral purpose, MCL 750.145a; MSA 28.341;
- F discharge of a firearm intentionally aimed at a person, MCL 750.234; MSA 28.431;

- F discharge of a firearm intentionally aimed at a person resulting in injury, MCL 750.235; MSA 28.432;
- F indecent exposure, MCL 750.335a; MSA 28.567(1);
- F stalking, MCL 750.411h(2)(a); MSA 28.643(8)(2)(a);
- F leaving the scene of a personal-injury accident, MCL 257.617a; MSA 9.2317(1);
- F operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 257.625; MSA 9.2325, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual;
- F selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701; MSA 18.1175(701), if the violation results in physical injury or death to any individual;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3); MSA 13A.80176(1) or (3), if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual;
- F a violation of a local ordinance substantially corresponding to a violation listed above; and
- F A charged felony or serious misdemeanor that is subsequently reduced or pled to a misdemeanor.

"Specified misdemeanors" are listed in MCL 780.901(h); MSA 28.1287(901)(h). They are misdemeanor violations of any of the following:

- F fleeing and eluding a police or conservation officer, MCL 257.602a; MSA 9.2302(1);*
- F driving while intoxicated or visibly impaired, MCL 257.625(1) or (3); MSA 9.2325(1) or (3);
- F reckless driving, MCL 257.626; MSA 9.2326;
- F driving without a valid license, MCL 257.904; MSA 9.2604;
- F operating a snowmobile while intoxicated or visibly impaired, MCL 324.82127(1) or (3); MSA 13A.82127(1) or (3);
- F operating an off-road vehicle while intoxicated, MCL 324.81134(1) or (2); MSA 13A.81134(1) or (2);

*All violations of MCL 257.602a; MSA 9.2302(1), are felonies.

- F operating an off-road vehicle while visibly impaired, MCL 324.81135; MSA 13A.81135;
- F operating a vessel while intoxicated or visibly impaired, MCL 324.80176(1) or (3); MSA 13A.80176(1) or (3);
- F operating an aircraft while under the influence of intoxicating liquor or controlled substance, MCL 259.185; MSA 10.285;
- F controlled substance violations, MCL 333.7401 to 333.7461 and 333.17766a; MSA 14.15(7401) to 14.15(7461) and 14.15(17766a);
- F selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701; MSA 18.1175(701);
- F operating a locomotive while under the influence of intoxicating liquor or controlled substance, MCL 462.353; MSA 22.1263(353);
- F operating a locomotive while visibly impaired, MCL 462.355; MSA 22.1263(355);
- F embezzlement, MCL 750.174; MSA 28.371;
- F false pretenses, MCL 750.218; MSA 28.415;
- F larceny, MCL 750.356; MSA 28.588;
- F second-degree retail fraud, MCL 750.356d; MSA 28.588(4);
- F larceny from a vacant dwelling, MCL 750.359; MSA 28.591;
- F larceny by conversion or embezzlement, MCL 750.362; MSA 28.594;
- F larceny of a rented vehicle, MCL 750.362a; MSA 28.594(1);
- F malicious destruction of personal property, MCL 750.377a; MSA 28.609(1);
- F malicious destruction of a building, MCL 750.380; MSA 28.612;
- F fleeing and eluding a police or conservation officer, MCL 750.479a(6); MSA 28.747(1)(6);
- F receiving or concealing stolen, embezzled, or converted property, MCL 750.535; MSA 28.803;
- F malicious use of telephone, MCL 750.540e; MSA 28.808(5); and
- F a local ordinance substantially corresponding to a violation listed above.

For purposes of the “crime victim’s rights fund assessment,” a “juvenile offense” is defined as an offense that if committed by an adult would be a felony, “serious misdemeanor,” or “specified misdemeanor.” MCL 780.901(f); MSA 28.1287(901)(f).

In a criminal case, payment of the “crime victim’s rights fund assessment” must be a condition of probation or parole. MCL 780.905(1); MSA 28.1287(905)(1), MCL 771.3(1)(f); MSA 28.1133(1)(f), and MCL 791.236(7); MSA 28.2306(7). In a juvenile delinquency case, the court must order payment of the assessment in its order of disposition. MCL 712A.18(12); MSA 27.3178(598.18)(12).

If a criminal defendant who is ordered to pay an assessment posted a cash bond or bail deposit, the court must order the “crime victim’s rights fund assessment” collected out of the bond or bail. MCL 780.905(4); MSA 28.1287(905)(4). However, if the defendant is subject to a combination of fines, costs, restitution, assessments, or other payments, the cash bond or bail must be distributed as described in Section 10.22. MCL 780.905(4) and (5); MSA 28.1287(905)(4) and (5).

C. Duties of the Court Clerk

*See Section 2.9, below, for a sample reporting form.

MCL 780.905(6); MSA 28.1287(905)(6), prescribes duties for the clerk of the court regarding “crime victim’s rights fund assessments.” On the last day of each month, the clerk must transmit 90% of the assessments collected to the Department of Treasury; the clerk may retain 10% of the assessments collected to defray administrative costs and to provide crime victim rights services. MCL 780.905(6)(a); MSA 28.1287(905)(6)(a). In addition, the clerk must transmit a monthly report* to the Department of Community Health that contains the following information:

- F the name of the court;
- F the total number of criminal convictions or juvenile dispositions;
- F the total number of defendants or juveniles against whom an assessment was imposed by that court;
- F the total amount of assessments imposed by that court;
- F the total amount of assessments collected by that court; and
- F other information required by the Department of Community Health. MCL 780.905(6)(b); MSA 28.1287(905)(6)(b).

The money collected from the assessments is deposited in the “crime victim’s rights fund” and is used to fund crime victim rights services and, in some circumstances, crime victim compensation. MCL 780.904; MSA 28.1287(904), and MCL 780.905(3); MSA 28.1287(905)(3).

D. Depositing Unclaimed Restitution in the “Crime Victim’s Rights Fund”

If they are not claimed within two years of being ordered, restitution payments may be deposited in the “crime victim’s rights fund.” However, a person or

entity entitled to the restitution payments may claim the money at any time after it has been deposited in the fund. If this occurs, the Crime Victim Services Commission must reimburse the court in the amount of the claimed restitution. The relevant provisions state as follows:

“If a person or entity entitled to restitution cannot be located or refuses to claim that restitution within 2 years after the date on which he or she could have claimed the restitution, the restitution paid to that person or entity shall be deposited in the crime victim’s rights fund created under . . . MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court’s revenue transmittal to the crime victim rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity.” MCL 780.766(21); MSA 28.1287(766)(21), MCL 780.794(21); MSA 28.1287(794)(21), and MCL 780.826(18); MSA 28.1287(826)(18).*

*These provisions are effective June 1, 2001.

2.9 Crime Victim’s Rights Assessment Report

The following sample assessment report is produced by the Crime Victim Services Commission to assist courts in reporting their collection and allocation* of the crime victim’s rights fund assessments explained in Section 2.8.

*Allocation of monies collected from criminal defendants and juveniles is discussed in Section 10.22.

CRIME VICTIM SERVICES COMMISSION
DEPARTMENT OF COMMUNITY HEALTH
CRIME VICTIM RIGHTS ASSESSMENT REPORT
 (Instructions for completing this form on reverse side)

1. Court name, address & telephone number	2. Collection Period – (Month/Year)
	3. Funding Control Unit(s)

CONVICTIONS AND ASSESSMENT ORDERS

4. Total number of Assessable Convictions	
5. Total number of Assessed Defendants	
6. Total dollar amount of Assessments Imposed	\$

ASSESSMENTS COLLECTIONS AND TRANSMITTALS

7. Total dollar amount of assessments collected	\$
8. Assessments derived from the following (check one): <input type="checkbox"/> Felony convictions (\$60) <input type="checkbox"/> Serious & Specified Misdemeanors (\$50) <input type="checkbox"/> Juvenile Dispositions (\$20)	
9. Administrative Stipend – 10% of assessments collected	\$
10. Total amount of Assessments transmitted to the Department of Treasury for Account #228.37.	\$

I certify that the information included in this report is correct and accurately reflects assessments collected in accordance with PA 196 of 1989.

11. Signature and Title of Preparer	Date
-------------------------------------	------

CVR-606
REV. 5/00

CRIME VICTIM RIGHTS ASSESSMENT REPORT INSTRUCTIONS

1. Enter the court name, number, address and telephone number.
2. Collection Period. Enter the month and year during which the reported assessments were collected.
3. Funding control Unit(s). Enter the county(ies), city(ies), or township(s) that comprise the court's funding control unit(s).
4. Total number of Assessable Convictions. Enter the total number of assessable convictions in the court for the reporting period.
5. Total number of Assessed Defendants. Enter the total number of defendants assessed in the court during the reporting period. Number reported is not necessarily equal to the number reported in #4.
6. Total dollar amount of assessments imposed. Enter the total dollar amount of assessments imposed in court during the reporting period.
7. Total Assessments Collected. Enter the total dollar amount of assessments collected during the reporting period.
8. Assessments derived from. Indicate the type of offense from which assessments are derived. Felony convictions (\$60), Serious and Specified Misdemeanors (\$50), Juvenile Dispositions (\$20).
9. Administrative Stipend. Enter 10% of the total assessments collected (#7). This amount is retained by the court for its cost of collecting the assessment.
10. Enter the total amount of assessments transmitted to the Department of Treasury for account #228.37 for the reporting period (subtract #9 from #7). Transmittal of funds should be to the Department of Treasury with the approved transmittal advice form.
11. Certification. Signature of the person that certifies to the accuracy of the information in this report.

Submit the completed report by the end of each month to:

Crime Victim Services Commission
Crime Victim Rights Assessments
Department of Community Health
320 S. Walnut Street
Lansing, Michigan 48913

